

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

ROGER LYNN BEASON,

Plaintiff, 2:15-cv-1274-CL

v.

FINDINGS AND  
RECOMMENDATION

K. Schaecher, et al.,

Defendants.

CLARKE, Magistrate Judge.

Plaintiff, an inmate in the custody of the Oregon Department of Corrections, filed this action pursuant to 42 U.S.C. § 1983 alleging that defendants have falsified his conviction records in order to keep him in prison in violation of his constitutional rights.

For the reasons explained to plaintiff in an Order (#7) entered August 24, 2015, plaintiff's complaint is properly construed as a petition for habeas corpus under 28 U.S.C. §

2254. Therefore, plaintiff was allowed 30 days to file an amended pleading (specifically a petition under 28 U.S.C. § 2254) and advised that failure to do so would result in the dismissal of this proceeding for failure to prosecute.

Plaintiff requested review of that order and it was affirmed by Judge Aiken on October 20, 2015.

Plaintiff did not file an amended pleading as directed by the court.

On November 9, 2015, plaintiff filed a "Notice of intent to amend complaint to include Claim for Eighth Amendment violation." (#15) However, plaintiff has not filed such a complaint.

Plaintiff is free to file a complaint for alleged Eighth Amendment violations in a separate civil action. This action should be dismissed for lack of jurisdiction [as explained in the court's Order (#7)] and for failure to prosecute.

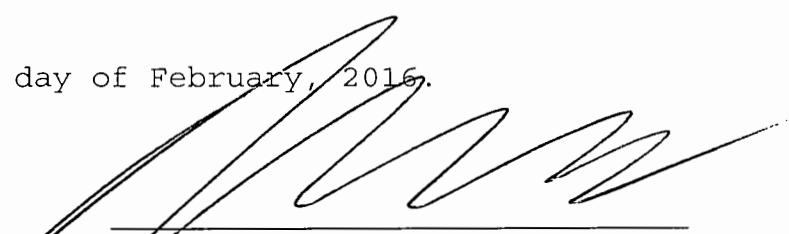
The Clerk of the Court should be directed to enter a judgment dismissing this proceeding without prejudice.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this

recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

*Any appeal from an order adopting this Findings and Recommendation or judgment dismissing this case would be frivolous and not taken in good faith. Therefore, plaintiff's in forma pauperis status should be revoked.*

DATED this 8 day of February, 2016.

  
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Mark D. Clarke  
United States Magistrate Judge